

## REMARKS

This request for reconsideration is being filed in response to the final Office Action mailed January 14, 2008. For the following reasons, this amendment should be entered, the application allowed, and the case passed to issue. No new matter or considerations are introduced by this amendment, as the amendment merely cancels claims.

Claims 1 and 11 are pending in this application. Claims 1, 11-15, and 18-20 were rejected. Claims 12-15 and 18-20 have been canceled in this response without prejudice. Claims 2-10, 16, and 17 were previously canceled.

### *Response to Arguments*

Evidence of unexpected results was asserted in the Amendment filed October 1, 2007 (page 8). We note that in the final Office Action, the Examiner did not comment on the evidence of unexpected results. Thus, it appears the Examiner did not consider the evidence of unexpected results. Applicants respectfully request the Examiner consider the evidence of unexpected results. If this application is not allowed in view of the unexpected results, the Examiner is respectfully requested to provide an explanation in the subsequent action.

### *Claim Rejections Under 35 U.S.C. § 112*

Claim 19 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Examiner asserted that Applicants have not disclosed how to make or use the invention because there is allegedly no teaching of how to exclude the effect of the porosity of the adjacent electrode and porous insulating film when measuring the void size distribution of the interface of the electrode and porous insulating film by a mercury intrusion porosimeter.

Claim 19 was rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the written description requirement. The Examiner asserted that there is no teaching of void size distribution of the negative electrode.

Claim 12 was rejected under 35 U.S.C. § 112, second paragraph, as being indefinite because it is allegedly not clear what is meant by dendrite and coral shapes.

These rejections are traversed. The rejections of claims 12 and 19 are moot, as claims 12 and 19 have been canceled.

***Claim Rejections Under 35 U.S.C. § 103***

Claims 1 and 11 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Inoue et al. (JP 9-147916) in view of Shinohara et al. (US 2002/0055036). This rejection is traversed, and reconsideration and withdrawal thereof respectfully requested. The following is a comparison between the invention, as claimed, and the cited prior art.

The Examiner asserted that Inoue et al. disclose a non-aqueous electrolyte secondary battery with a porous insulating layer comprising carboxy methyl cellulose and alumina coating the negative electrode and a separator with a ratio R of actual volume to apparent volume 0.5. The Examiner acknowledged that Inoue et al. do not teach the porosity of the porous insulating film. The Examiner asserted that Shinohara et al. teach a separator having a shut-down layer with a porosity within the claimed range. The Examiner concluded it would have been obvious to adjust the porosity within the claimed range in order enhance electrolyte retention and film integrity.

The combination of Inoue et al. and Shinohara et al. do not suggest the claimed non-aqueous electrolyte secondary battery, because the cited references do not suggest the unexpected improvement in battery characteristics disclosed in the present specification when

the claimed relation between R and P is met. For example, as clearly shown in Tables 2 and 3 of the present specification, at  $R-P < 0.30$  an unexpected improvement in discharge capacity results and at  $R-P > -0.10$  high internal resistance and satisfactory shut-down effect is obtained.

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Inoue et al. in view of Yukita et al. (US 5,705,292) and further in view of Shinohara et al.

Claims 13 and 14 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Inoue et al. in view of Yukita et al. and Shinohara et al. and further in view of Akashi et al. (JP 2004/010701).

Claims 15 and 18-20 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Inoue et al. in view of Ota et al. (US 6,365,300).

These rejections are moot, as claims 12-15 and 18-20 have been canceled.

In light of the above amendments and remarks, this amendment should be entered, the application allowed, and the case passed to issue. If there are any questions regarding these remarks or the application in general, a telephone call to the undersigned would be appreciated to expedite prosecution of the application.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account 500417 and please credit any excess fees to such deposit account.

Respectfully submitted,

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